AMCA COAL LEASING, INC.
SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 95-212, 95-224 Decided July 29, 1998

Appeals from a decision of the Utah State Office, Bureau of Land Management, terminating a suspension of operations and production on coal leases. U-087805, etc.

Affirmed in part, affirmed in part as modified, and reversed in part.

1. Coal Leases and Permits: Suspension of Operations and Production--Mineral Leasing Act: Generally

   Section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. § 209 (1994), authorizes the Secretary of the Interior to suspend operations and production under a mineral lease in the interest of conservation. A suspension decision will be sustained where study of the environmental impacts of proposed development is required prior to issuance of necessary permits.

2. Coal Leases and Permits: Suspension of Operations and Production--Mineral Leasing Act: Generally

   A decision terminating a previous suspension of operations and production on a coal lease in the exercise of discretion by BLM will be affirmed prospectively to the extent there is no pending application for development of the coal on the leases.

3. Coal Leases and Permits: Suspension of Operations and Production--Mineral Leasing Act: Generally

   Factors sufficient to justify an exercise of discretion by BLM to deny an application for suspension of operations and production on a coal lease prospectively may not sustain a retroactive revocation of a suspension previously granted in the absence of a violation of statute or regulation. A BLM decision to terminate a prior suspension retroactively will be affirmed with prospective effect when the lessee has failed to establish error in the decision to deny a further suspension.

APPEARANCES: John S. Kirkham, Esq., and Michael W. Devine, Esq., Salt Lake City, for AMCA Coal; Heidi J. McIntosh, Esq., Salt Lake City, Utah, and Rachel G. Lattimore, Washington, D.C., for Southern Utah Wilderness Alliance; Sam Kalen, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

AMCA Coal Leasing, Inc. (AMCA) and Southern Utah Wilderness Alliance (SUWA) have brought appeals 1/ from a December 27, 1994, decision of the Utah State Office, Bureau of Land Management (the Bureau or BLM). Appellant AMCA, a wholly owned subsidiary of Andalex Resources, Inc., holds 17 Federal coal leases on the Kaiparowits Plateau in Southern Utah. The decision under appeal terminated a suspension of operations and production previously granted pursuant to section 39 of the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. § 209 (1994), for 10 of those leases. The suspension of operations and production had originally been granted for the 17 leases by BLM decision of May 11, 1992, in response to an application filed by the lessee. 2/ The lessee challenges the BLM termination of the suspension of the 10 leases. Appellant SUWA contests the failure of BLM to terminate the suspension as to the seven remaining leases. By Order dated March 7, 1995, we consolidated the two appeals and granted AMCA's motion for stay pending administrative review.

The Decision on Appeal

The BLM decision terminating the suspension recites that AMCA had previously proposed a lease development project, including a mine plan proposal, which triggered a determination by BLM that an Environmental Impact Statement (EIS) was required for the project pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994). This requirement to prepare an EIS prior to lease development had been the basis of BLM's May 1992 decision granting AMCA's application for a suspension of the 17 leases. The BLM termination decision was grounded on a finding that the scope

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1/ AMCA's appeal is docketed as IBLA 95-212; SUWA's appeal is docketed as IBLA 95-224.

2/ The suspension was not terminated on the following leases:

U-087806	U-087807	U-087828
U-087833	U-087834	U-096486
U-0101142		

The coal leases for which the suspension was lifted are:

U-087805	U-087835	U-087836
U-092139	U-092140	U-092141
U-096494	U-096495	U-096496
U-096497		

of the proposed Smoky Hollow coal mine project, as defined in the notice of intent to prepare the EIS published in July 1992, embraced development of only 7 of Appellant's coal leases and did not include the 10 leases for which the suspension was terminated. With respect to the leases not included in the scope of the project, the ground for the suspension was found by BLM to no longer exist.

Specifically, BLM noted that the suspension was granted pursuant to Stipulations of Approval for the Suspension (Stipulations), which were made part of the 1992 decision, and which require "annual certification that the conditions that warranted the suspension continue to exist." (Stipulation B.3.(b).) The termination of the suspension was tied by BLM to lessee's failure in May 1993 and May 1994 to provide the required annual certification that the conditions which warrant the suspension continued to exist. The Bureau maintained that, after publication of the notice of intent to prepare an EIS defining the scope of the project in July 1992, AMCA could not have provided the necessary certification that conditions warranted continuation of the suspension for 10 of the leases because no development was proposed on those 10 leases. Hence, BLM held that the suspension of these 10 leases terminated May 1, 1993, the first day of the calendar month in which certification was required. The decision also ordered the lessee to pay back rental on those leases from May 1, 1993, in the amount of $155,970.

Factual Background

All of the leases except one were originally issued on November 1, 1965; Lease U-01011142 was issued on April 1, 1967. In 1971, the leases were assigned to subsidiaries of electric utility companies engaged in a proposed development known as the Kaiparowits Power Project. When attempts to develop the leases through the Kaiparowits Project failed, these companies entered into an agreement to assign their interest in the leases to AMCA. The assignment was filed on October 10, 1985, was approved on March 5, 1986, and became effective April 1, 1986. By decisions dated February 3, 1986, and May 18, 1988, BLM readjusted the lease terms in accordance with the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. §§ 201-209 (1994), with an effective date of November 1, 1985, for all of the leases except Lease U-0101142, which was readjusted effective April 1, 1987. Readjustment of the leases subsequent to enactment of FCLAA subjected them to diligent development requirements imposed by FCLAA mandating termination of any lease which is not producing in commercial quantities within 10 years. 30 U.S.C. § 207(a) (1994); 43 C.F.R. §§ 3480.0-5(a)(12), 3483.2; see Mountain States Resources Corp., 92 IBLA 184, 93 I.D. 239 (1986).

By letter of March 1, 1990, BLM notified Andalex that an EIS would be required to assess the impact of anticipated commercial development of the leases in adjudicating a pending application for a road right-of-way required for the project. On March 13, 1990, Andalex filed with BLM a "Project Proposal Description" for a 2.5 million tons per year (mtpy)

mine operating within five of its Federal coal leases. 3/ The company proposed to "develop an underground coal mine on these leases with a production capacity of approximately 2,500,000 tons per year." (Project Proposal Description for Warm Springs Project dated Mar. 9, 1990, at 1, Ex. A to SUWA's Reply to AMCA Statement of Reasons (SOR).) Documents in the record refer to both the "Smoky Hollow Mine Project" and the "Warm Springs Project." A close reading of the Project Proposal Description reveals that the "overall project, including the mine, loadouts and associated facilities such as haulroads, powerlines and other utilities, is referred to as the Warm Springs Project." Id. The Warm Springs Project thus includes an underground mine, called the Smoky Hollow Mine. 4/

In February 1991, Andalex filed a Permit Application Package (PAP) with the Utah Division of Oil, Gas & Mining (UDOGM), the State agency responsible for administering the regulatory program implemented pursuant to the Surface Mining Control and Reclamation Act of 1977. 30 U.S.C. §§ 1201-1328 (1994); see 30 C.F.R. Part 944. Pursuant to a cooperative agreement between State and Federal authorities governing regulation of operations on Federal lands, this Department assists UDOGM in ensuring compliance with statutory provisions of the MLA and NEPA with respect to

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3/ In the letter to BLM accompanying the Project Proposal Description, Andalex stated:

"The description has been kept somewhat brief because future input from scoping will help tighten the project description. The project proposal description will be amended as required during the process. Hopefully this is sufficient for the BLM to begin preparing the Memorandum of Understanding with the other federal agencies which may be potentially involved with this project."

4/ In pertinent part, the Project Proposal Description stated:

"Coal will be trucked from the mine to unit-train loading facilities to be constructed along existing railroad lines near Moapa, NV and Flagstaff, AZ. Once loaded on the rail the coal will be delivered to southern California for export destination or to other markets. The overall project, including the mine, loadouts and associated facilities such as haulroads, powerlines and other utilities, is referred to as the Warm Springs Project." * * *

"Surface facilities for the [underground] mine will be located in Smoky Hollow, a tributary to Warm Creek, in the SW1/4 of Sec. 19, T41S, R4S. * * * Surface facilities of the mine will include a coal stockpile placed by a radial stacker, coal crushing and screening facilities, an automated truck loading station, material and supply storage pads, employee parking areas and various buildings associated with the operation such as mine office, bathhouse, warehouse, and maintenance shop." * * *

"The mine is expected to employ approximately 150 people at full production. Coal reserves in the initial mine area will sustain mine production in excess of 30 years; adjacent reserves will extend the life of the operation over 100 years." (Project Proposal Description for Warm Springs Project dated Mar. 9, 1990, at 1, SUWA Reply to AMCA SOR, at Ex. A.)

Federally-leased coal. 30 C.F.R. § 944.30. The PAP proposed a mining plan covering just under 10,000 acres on land encompassing 7 of the 17 leases, but otherwise was consistent with the plan proposed to BLM in 1990. 5/

On March 7, 1991, BLM and Andalex executed a Memorandum of Agreement (MOA) for preparation of the EIS, whereby it was agreed that Andalex would assume the cost of the EIS. See 43 C.F.R. Subpart 2808. The purpose of the MOA was to set forth "the procedures by which the parties agree to prepare a joint environmental document and subsequent rights-of-way grants [sic] and permits for the proposed Andalex Resources Smoky Hollow Coal Mine, access roads, load out facilities, and any related facilities" and to

> establish the responsibilities of Andalex Resources and the BLM, the cost estimates, and the conditions and procedures to be followed in preparation of an EIS through a third party environmental contract/BLM effort, and the processing of the subject application for a federal coal mining permit and at least three Title V FLPMA [6/] rights-of-ways.

(SOR, Ex. I at 1.) In the MOA, Andalex agreed to provide BLM with "a description of the project through the expected life of the project, sufficient to allow preparation of the EIS." Id. at 4. The MOA stated that the "project description" must include

> not only the facilities to be constructed on public lands in the mine area, but also those facilities to be constructed on public lands in the Moapa Valley area and those facilities to be constructed on the proposed Forest Service Exchange lands, permitted lands, and private lands. In addition, Andalex Resources will provide BLM with a base map and a detailed description of all facilities, access roads, proposed transportation haul roads, utilities, load-out facilities, etc. to be included in the five year plan.

Id.

5/ While the PAP which was filed with UDOGM is not included in the BLM record filed with this Board, a Mar. 18, 1994, letter from Andalex to BLM indicates that the PAP submitted to UDOGM proposed a "single 2.5 mtpy underground mining operation in an area that has already been disturbed by previous coal mining operations." (SUWA Reply to AMCA SOR, Ex. B at 2). A July 6, 1992, letter from UDOGM to the Interior Department's Office of Surface Mining Reclamation and Enforcement (OSM) certifying that UDOGM's review of the PAP was "administratively complete" reveals that the mining package submitted to UDOGM encompassed 9,735 acres within the "life-of-mine permit area."

6/ Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1994).

On July 29, 1991, Andalex filed with BLM an application to suspend 21 Federal coal leases, including the 17 leases now at issue. 7/ Citing the diligent development requirements imposed on coal lessees by FCLAA, Andalex noted that its ability to meet those standards was affected by the BLM imposed requirement to prepare an EIS before development of the mine can commence. In view of the complexity of the EIS process involving several Government agencies and the extensive mine development activities including road improvements and construction of load-out facilities, Andalex argued that without a suspension of the leases for the period of time required to complete the EIS process it will be impossible to develop the coal resource as required by FCLAA. In submitting the suspension application, Andalex noted that the "initial project proposed by Andalex on the leases is depicted on maps contained in a packet * * *. The details of the specific mine plan are contained in the permit application package that has been filed with the Utah Division of Oil, Gas and Mining." (SOR, Ex. E at 10-11.)

The BLM decision approving the suspension found that it was in the interest of conservation to suspend operations and production on the coal leases until 30 days after the Record of Decision for the Smoky Hollow Coal Mine Project EIS is filed, citing 43 C.F.R. § 3483.3(b). The suspension was explicitly made subject to the Stipulations attached to the May 1992 decision, and made a part thereof. (May 11, 1992, Decision at 2.) The Stipulations provided, inter alia, for the suspension of beneficial uses of the lease by the lessee, and for termination by BLM of the suspension "for justifiable cause." (Stipulations at 2.) The BLM decision made the suspension effective September 10, 1990, defined as "the date that beneficial use ceased on the Federal coal leases." (Stipulations at 1.) Six weeks after granting the suspension, the BLM State Office ordered a refund of rental and minimum royalty payments made by the lessee for the period subsequent to the effective date of the suspension.

On July 14, 1992, BLM and OSM issued a notice of intent to prepare an EIS on the Warm Springs Project, including the proposed Smoky Hollow underground coal mine, associated rights-of-way and facilities, as well as two proposed coal load-out facilities. 57 Fed. Reg. 31207 (July 14, 1992). Specifically, the notice of intent defines the scope of the EIS as follows:

> The EIS will analyze the probable impacts that would result should BLM and OSM approve the applications for, and Andalex subsequently develop, the proposed Warm Springs Project. The EIS will also analyze the probable cumulative impacts that would result from regional mining and transportation activities, not only at the proposed Smoky Hollow Mine, but also at other existing and proposed operations in its vicinity in southern Utah, northern Arizona, and southeastern Nevada.

7/ The company had previously sought relinquishment of four leases; therefore, no suspension was granted for those leases.

57 Fed. Reg. 31208. That notice reflected a proposed mining operation to recover 75 million tons of coal over a 30-year life of the mine, to be mined at an average rate of 2.5 mtpy, primarily using longwall methods, and indicated that the Smoky Hollow mine proposal would "eventually cover 9,776 acres of land in secs. 11 through 15, 23 through 25, and 36, T. 41 S., R. 3 E., and secs. 9, 16 through 21, and 29 through 32, T. 41 S., R. 4 E., all in the Salt Lake Principal Meridian." Including other acreage for rights-of-way for power lines and loading facilities, Andalex proposed disturbance of a total of 10,605 acres, all within the area encompassed by 7 of the 17 leases for which the suspension was originally granted. The description then provides specific acreage information showing a total of 10,605 total permitted acreage, including 9,776 acres of "life of mine `permitted' area," and 829 acres of "other project `permitted area.'" 57 Fed. Reg. 31208.

Preparation of the EIS began shortly thereafter, and continued into 1993 and 1994. (SOR, Exs. J-M.) The EIS was not yet complete when BLM issued the decision on appeal. (Dec. 27, 1994, Decision at 2.)

Contentions of the Parties on Appeal

With respect to BLM's decision terminating the suspension because AMCA failed to comply with Stipulation B.3.(b), AMCA argues that (1) it did not violate the stipulation calling for annual certification that the conditions that warranted the suspensions continued to exist; (2) even if there was a "technical violation" of the Stipulation, BLM was aware that preparation of the EIS was continuing; and (3) BLM waived its right to terminate the suspension on this basis by accepting payments from AMCA for EIS preparation. Further, AMCA contends that the BLM decision terminating the suspension was arbitrary, capricious, and an abuse of discretion because (1) BLM failed to provide AMCA with written notice and opportunity to cure; (2) BLM incorrectly presumed that the 10 leases were not covered by the EIS; and (3) BLM required the EIS to be prepared before permitting AMCA to develop any of the leases. Additionally, AMCA maintains that it has not had beneficial use of any of the leases since September 10, 1990; and "if the EIS does not cover the ten leases subject to the partial termination Decision, * * * [the decision] constitutes a breach of contract by BLM."

The BLM Answer characterizes the question on appeal as "whether the BLM acted arbitrarily or capriciously in terminating the suspension on the 10 leases," and states that "[t]he reason for the BLM's decision was to enforce stipulation B.3.(b) of the initial suspension decision." (BLM Answer at 6-7.) Since it maintains that AMCA clearly violated the stipulation in the suspension decision, BLM contends that it is immaterial whether the EIS "covered" all 17 of the leases; the salient fact, according to BLM, is that AMCA proposed development of only 7 of the leases, and did not include any proposed development on the 10 leases for which the suspension was terminated. (BLM Answer at 9-17.)

In pleadings filed with the Board, SUWA argues that termination of the suspension was proper given AMCA's breach of the stipulation regarding certification contained in the suspension decision. Further SUWA contends that BLM erred in not terminating the suspension of the diligence requirements on the seven remaining suspended leases, as AMCA did not comply with Stipulation B.3.(b) for any of the leases. It is asserted by SUWA that AMCA should be bound by its own definition of the project and that termination of the suspensions as to 10 of the leases was warranted because AMCA was not deprived of beneficial use of those leases by preparation of the EIS. Hence, SUWA contends that BLM should have terminated the suspension for the 10 leases not included in the proposal retroactive to the effective date of the initial suspension decision, September 10, 1990, and that a suspension for the remaining 7 leases should be terminated retroactive to the first day of the month following AMCA's violation of the stipulations governing the suspension decision. See SUWA Reply at 2-3; SUWA SOR in IBLA 95-224 at 3.

Analysis

[1] Section 39 of the MLA, as amended, 30 U.S.C. § 209 (1994), authorizes the Secretary or his delegate to suspend operations and production under a mineral lease "in the interest of conservation," thereby extending the term of the lease for the suspension period. As the Board held in NevDak Oil and Exploration, Inc., 104 IBLA 133, 138 (1988):

> In accordance with the court's opinion in Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 600 (D.C. Cir. 1981), the term "conservation" in section 39 of the Mineral Leasing Act is to be given its "ordinary meaning" and includes "prevention of environmental damage." Thus, operations and production may be suspended not only where to do so conserves the mineral resource, but also where suspension affords the Department sufficient time to decide whether and/or under what circumstances to permit exploration and development of the mineral resource so as to best protect other resources.

(Additional citations omitted.) In NevDak, we further noted that:

> We have construed section 39 of the Mineral Leasing Act to provide for suspension either as a matter of right where, through some act, omission, or delay by a Federal agency, beneficial enjoyment of a lease has been precluded, or as a matter of discretion, in the interest of conservation. Sierra Club (On Judicial Remand), 80 IBLA 251 (1984), aff'd, Getty Oil Co. v. Clark, 614 F. Supp. 904 (D. Wyo. 1985), aff'd sub nom., Texaco Producing, Inc. v. Hodel, 840 F.2d 776 (10th Cir. 1988).

104 IBLA at 137. Thus, it has been recognized that the Department may suspend a lease in the interest of conservation when action cannot be taken on an application to develop the leased resources because of the

time needed to comply with the requirements of the NEPA. John March, 98 IBLA 143 (1987); Jones-O'Brien, Inc., 85 I.D. 89, 91 (1978); see Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d at 600; Union Oil Co. v. Morton, 512 F.2d 743, 749 (9th Cir. 1975). Although most of the cases have involved oil and gas leases, the same principles have been recognized as applicable to coal leases. Alfred G. Hoyl, 123 IBLA 169, 190-91, 99 I.D. 87, 98-99 (1992), reaffirmed as modified, 123 IBLA 194A, 100 I.D. 34 (1993), aff'd, 927 F. Supp. 1411 (D. Colo. 1996), aff'd, 129 F.3d 1377 (10th Cir. 1997).

With respect to the seven coal leases which are embraced in the planned development included in the PAP and right-of-way applications for related facilities, it appears from the record that AMCA has been effectively precluded from exploiting leased resources pending completion of the permitting process which requires completion of the EIS. This work is being undertaken by a third-party contractor under the direction and control of BLM, notwithstanding the fact that AMCA is paying for the work. Under these circumstances, the BLM decision, in the exercise of its discretion, not to terminate the suspension of the seven leases pending completion of the EIS was clearly a sustainable exercise of discretion. We find it unnecessary to determine whether the requirement to prepare an EIS established a suspension by right as the record supports the BLM decision exercising the discretion to continue the suspension previously granted. A decision by BLM in the exercise of that discretion will not be disturbed on appeal if supported by a rational basis. Alfred G. Hoyl (On Reconsideration), 123 IBLA at 194S, 100 I.D. at 43. Both the courts and this Board have recognized that a suspension is properly granted when the Department has precluded lease development pending analysis of the environmental implications of mineral development under the lease. Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d at 600; Union Oil Co. v. Morton, 512 F.2d 743, 749 (9th Cir. 1975); Sierra Club (On Judicial Remand), 80 IBLA at 261-62. Thus, the contention of SUWA that BLM erred in failing to revoke the suspension as to the seven leases in its decision must be rejected. 8/

[2] That part of the BLM decision which terminated the suspension as to the 10 leases not involved in the PAP presents a slightly different question on review. To the extent that the BLM decision relied upon the notice of preparation of an EIS to find that development of the other 10 leases was outside the scope of the EIS, it was premature. 9/ We note,

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8/ The assertion by SUWA that the suspensions should have been terminated for violation of Stipulation B.3.(b) cannot be sustained. We find that BLM properly declined to terminate the suspension for failure of the lessee to provide annual certification that the conditions that warranted the suspension continue when those circumstances which justify the suspension have been imposed by the lessor and are known to be ongoing.

9/ It is well established that review of the environmental impacts of a proposed mineral development project properly includes foreseeable impacts of related mineral development. "Cumulative impact" is defined as the "impact on the environment which results from the incremental impact of the

however, that those cases upholding the exercise of the Secretary's discretion to suspend leases have generally arisen in the context of submission by the lessee for approval of a specific application to develop leased mineral resources. John March, supra (application for right-of-way to oil and gas well drill site); Sierra Club (On Judicial Remand), supra (application for permit to drill (APD) oil and gas well). Conversely, in those cases where no delay in development was precipitated by Departmental review of an application to permit development, denial of a suspension application in the exercise of discretion has generally been upheld. Alfred G. Hoyl (On Reconsideration), supra (no coal mine development permit applications pending); Bronco Oil & Gas Co., 105 IBLA 84 (1988) (oil and gas well abandoned, no pending application for reworking); NevDak Oil and Exploration, Inc., supra (APD for oil and gas well approved in time to permit development). Thus, in the absence of any pending development application involving the 10 leases, a denial of an application for suspension of the leases in the exercise of the Secretary's discretion would be sustainable regardless of the ultimate scope of the EIS. 10/

[3] Factors sufficient to justify an exercise of the Secretary's discretion to deny a suspension of a coal lease, however, may not sustain a retroactive revocation of a suspension previously granted by a BLM decision. A distinction is properly drawn between the rational basis necessary to support an exercise of discretionary authority in adjudicating an application and the legal predicate required to support revocation of a prior decision adjudicating such an application. See Robert L. Bayless, 138 IBLA 210, 222 (1997); Viersen & Cochran, 134 IBLA 155, 165-66 (1995); John Bloyce Castle, 81 IBLA 53, 54 (1984); Carl J. Taffera, 71 IBLA 72, 76-77 (1983). In the absence of a violation of statute or regulation, which has not been established here, the retroactive revocation of a discretionary decision relied upon by an appellant is ordinarily barred. Further, we note that in the context of the present case, AMCA was barred from beneficial use of the leases under the terms of the May 1992 suspension. (Stipulations of Approval at ¶ B.2, AMCA SOR, Ex. B.) 11/ No basis

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fn. 9 (continued)
action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. Cumulative impacts are properly considered in determining whether a proposed action would have a significant impact on the human environment. 40 C.F.R. § 1508.27(b)(7); see Southern Utah Wilderness Alliance, 124 IBLA 162 (1992).

10/ Former BLM Utah State Director James Parker indicates in his January 1995 affidavit that it was his understanding that AMCA "planned to mine all or some combination of the leases, depending on the outcome of the EIS and future market conditions." (Ex. C to AMCA SOR at 1.) This, however, does not constitute an application for approval of plans to develop those leases.

11/ The Stay Order issued by the Board in connection with this appeal effectively precluded AMCA from beneficial use of the leases through the date of our decision on this appeal.

has been shown for rescinding the suspension decision retroactively for a period of time when the lessee was barred from beneficial use of the leases. Indeed, as noted in our previous discussion, the cases support a suspension when the lessee is precluded from beneficial use of the leases. To the extent BLM relied upon the purported failure of AMCA to certify that the conditions which warranted the suspension continued to exist, the decision cannot be upheld on this basis. Regardless of whether the failure to certify the continuance of certain unspecified conditions 12/ might justify an exercise of discretion to terminate the suspension prospectively, this would not establish a basis for rescinding approval of a suspension retroactively for a period of time during which the lessee was precluded by BLM from beneficial use of the leases. Accordingly, we affirm the termination of the suspension of the 10 leases prospectively from the date of our decision in this case.

The parties to this appeal raised numerous arguments in their extensive briefing on this consolidated case. To the extent that we have not specifically addressed all of the arguments advanced by the parties herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as to the 7 leases still suspended, affirmed as modified to lift the suspension prospectively from the date of the Board's decision as to the 10 leases not included in the development proposal, and reversed to the extent it revoked the suspension retroactively.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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R.W. Mullen
Administrative Judge

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12/ It is asserted by AMCA that conditions did not materially change from the time of the suspension to the time of the BLM decision retroactively terminating the suspension.